

1 STACEY FULHORST, Executive Director
2 City of San Diego Ethics Commission
3 1010 Second Avenue, Suite 1530
4 San Diego, CA 92101
5 Telephone: (619) 533-3476
6 Facsimile: (619) 533-3448

7 Petitioner

8 **BEFORE THE CITY OF SAN DIEGO**
9 **ETHICS COMMISSION**

10 In re the Matter of:) Case No.: 2010-86
11)
12 SAN DIEGO WORKS! SPONSORED BY) **STIPULATION, DECISION, AND**
13 SAN DIEGO-IMPERIAL COUNTIES) **ORDER**
14 LABOR COUNCIL AFL-CIO, SAN DIEGO-)
15 IMPERIAL COUNTIES LABOR COUNCIL)
16 AFL-CIO, and XAVIER MARTINEZ,)
17 Respondents.)

18 **STIPULATION**

19 **THE PARTIES STIPULATE AS FOLLOWS:**

20 1. Petitioner Stacey Fulhorst is the Executive Director of the City of San Diego Ethics
21 Commission [Ethics Commission]. The Ethics Commission is charged with a duty to administer,
22 implement, and enforce local governmental ethics laws contained in the San Diego Municipal
23 Code [SDMC] relating to, among other things, the provisions of the Election Campaign Control
24 Ordinance [ECCO], SDMC section 27.2901, *et seq.*

25 2. At all times mentioned herein, the San Diego-Imperial Counties Labor Council
26 AFL-CIO [Labor Council] was the sponsor of, and was responsible for the activities of, San
27 Diego Works! Sponsored by San Diego-Imperial Counties Labor Council AFL-CIO [SDW], a
28 committee registered with the State of California (Identification No. 744131).

3. At all times mentioned herein, Xavier Martinez [Martinez] was the treasurer for
SDW.

1 4. Labor Council, SDW, and Martinez are collectively referred to herein as
2 “Respondents.”

3 5. This Stipulation will be submitted for consideration by the Ethics Commission at its
4 next scheduled meeting, and the agreements contained herein are contingent upon the approval
5 of the Stipulation and the accompanying Decision and Order by the Ethics Commission.

6 6. This Stipulation resolves all factual and legal issues raised in this matter by the
7 Ethics Commission without the necessity of holding an administrative hearing to determine
8 Respondents’ liability.

9 7. Respondents understand and knowingly and voluntarily waive any and all
10 procedural rights under the SDMC, including, but not limited to, a determination of probable
11 cause, the issuance and receipt of an administrative complaint, the right to appear personally in
12 any administrative hearing held in this matter, the right to confront and cross-examine witnesses
13 testifying at the hearing, the right to subpoena witnesses to testify at the hearing, and the right to
14 have the Ethics Commission or an impartial hearing officer hear this matter. Respondents agree
15 to hold the City of San Diego harmless from any and all claims or damages resulting from the
16 Commission’s investigation, this stipulated agreement, or any matter reasonably related thereto.
17 Respondents further agree that the terms of this Stipulation constitute compliance with the
18 provisions of SDMC section 26.0450 in that the Stipulation includes a recitation of facts, a
19 reference to each violation, and an order.

20 8. Respondents acknowledge that this Stipulation is not binding upon any other law
21 enforcement or government agency and does not preclude the Ethics Commission from referring
22 this matter to, cooperating with, or assisting any other law enforcement or government agency
23 with regard to this or any other related matter.

24 9. The parties agree that in the event the Ethics Commission refuses to accept this
25 Stipulation, it shall become null and void. Respondents further agree that in the event the Ethics
26 Commission rejects the Stipulation and a full evidentiary hearing before the Ethics Commission
27 becomes necessary, no member of the Ethics Commission or its staff shall be disqualified
28 because of prior consideration of this Stipulation.

Summary of Law and Facts

10. ECCO defines “committee” as any person or combination of persons who raise \$1,000 or more for the purpose of supporting or opposing a candidate or ballot measure, or make independent expenditures of \$1,000 or more, within a single calendar year. SDMC § 27.2903.

11. ECCO requires committees to file campaign statements in the time and manner required by California Government Code section 81000, *et seq.* and the regulations adopted by the Fair Political Practices Commission. It is unlawful under ECCO to fail to comply with the disclosure requirements of ECCO and state law. SDMC § 27.2930(j).

12. According to Government Code section 84203.5, any committee that has made independent expenditures totaling \$1,000 or more in a calendar year to support or oppose a City candidate or ballot measure is required to file independent expenditure reports in accordance with the pre-election filing schedule set forth in state law. For the November 2, 2010, general election, a committee that made independent expenditures of \$1,000 or more between July 1, 2010, and September 30, 2010, was required to file a Supplemental Independent Expenditure Report [Form 465] with the City Clerk on or before October 5, 2010. Cal. Gov’t Code § 84200.7.

13. During the month of September 2010, Respondent SDW made three independent expenditures totaling \$74,013.43 to oppose Lorie Zapf, a candidate for City Council District 6 in the November 2, 2010, general election.

14. Respondents did not file the requisite Form 465 with the City Clerk on October 5, 2010, disclosing the independent expenditures made during September of 2010 to oppose a City candidate. Ethics Commission staff contacted Respondent Martinez on October 7, 2010, to inquire about the failure to timely file a Form 465. Respondents subsequently filed a Form 465 with the City Clerk that same day; however, Respondents disclosed only one independent expenditure in the amount of \$14,700.00. Ethics Commission staff re-contacted Respondent Martinez on October 7, 2010, and advised him that the information disclosed on the Form 465 was inaccurate and incomplete. Respondents filed an amended Form 465 later that day, and disclosed the full amount of independent expenditures made to oppose Lorie Zapf during the reporting period.

1 **Counts**

2 **Counts 1 and 2 - Violations of SDMC section 27.2930**

3 15. Respondents violated SDMC section 27.2930 by failing to timely file a Form 465
4 with the City Clerk disclosing independent expenditures made in September of 2010 to oppose a
5 City candidate. Although the Form 465 was due on October 5, 2010, Respondents did not file it
6 until October 7, 2010, after they were reminded to do so by the Ethics Commission staff.

7 16. Respondents violated SDMC section 27.2930 by filing a Form 465 on October 7,
8 2010, that contained incomplete and inaccurate information in that it referenced only one
9 independent expenditure in the amount of \$14,700.00, when in fact Respondent SDW had made
10 three independent expenditures totaling \$74,013.43 during the reporting period. Respondents
11 filed an amended Form 465 on October 7, 2010, after they were asked to do so by Ethics
12 Commission staff.

13 **Factors in Aggravation**

14 17. The timely disclosure of campaign contributions and expenditures is the foundation
15 of the City's campaign laws. In particular, the pre-election filing requirement for independent
16 expenditures made in the weeks leading up to an election is extremely important because it
17 ensures that the public receives time-sensitive information regarding the sources and amounts of
18 expenditures made to support and oppose local candidates before they cast their votes. In this
19 case, were it not for the repeated efforts of Commission staff, Respondents may never have filed
20 a Form 465 disclosing all of the independent expenditures made by Respondents SDW and
21 Labor Council for the purpose of influencing the outcome of a City election.

22 18. Although Respondent Martinez is a professional campaign treasurer with extensive
23 experience, the Commission's investigation revealed that he did not have sufficient controls in
24 place to ensure the timely filing of Forms 465.

25 **Factors in Mitigation**

26 19. Respondents SDW and Labor Council reasonably relied on Respondent Martinez as
27 a professional campaign treasurer to timely file campaign disclosure statements as required by

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1 local law. Respondent Martinez has therefore taken full responsibility for the violations
2 described herein as well as the monetary penalty referenced below

3 20. Respondents have cooperated fully with the Ethics Commission investigation.

4 **Conclusion**

5 21. Respondents agree to take necessary and prudent precautions to ensure compliance
6 with all provisions of ECCO in the future. In particular, Respondent Martinez agrees to
7 implement improved controls and adequate supervisory measures to prevent future similar
8 violations of ECCO.

9 22. Respondents agree to pay a fine in the amount of \$2,000 for violating SDMC
10 section 27.2930. This amount must be paid no later than May 6, 2011, by check or money order
11 payable to the City Treasurer. The submitted payment will be held pending Commission
12 approval of this Stipulation and execution of the Decision and Order portion set forth below.

13
14 DATED: _____

STACEY FULHORST, Executive Director
ETHICS COMMISSION, Petitioner

15
16
17 DATED: _____

EVAN MCLAUGHLIN, on behalf of Respondents, SAN
DIEGO WORKS! SPONSORED BY SAN DIEGO-
IMPERIAL COUNTIES LABOR COUNCIL AFL-CIO
and SAN DIEGO-IMPERIAL COUNTIES LABOR
COUNCIL AFL-CIO

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21 DATED: _____

XAVIER MARTINEZ, Respondent

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DECISION AND ORDER

The Ethics Commission considered the above Stipulation at its meeting on _____,
2011. The Ethics Commission hereby approves the Stipulation and orders that, in accordance
with the Stipulation, Respondents pay a fine in the amount of \$2,000.

DATED: _____
LARRY WESTFALL, Chair
SAN DIEGO ETHICS COMMISSION